

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Del Oro Water Co., Inc. (U-61-W) for a Certificate that Present and Future Public Convenience and Necessity Require Applicant to Install a Transmission Main (and Associated Facilities) to Transport Water from Lake Oroville in Butte County, California to Customers for Water Service in its Lime Saddle, Paradise Pines and Magalia Districts in order to Provide a Long Term Regional Solution to the Needs of Such Customers; for Authority to Incur Indebtedness in the Approximate Amount of \$7,500,000 for Such Capital Expenditures; and for Authority to Recover All Present and Future Costs in connection with Such Improvements by Appropriate Increases in the Respective Water Rates of Such Customers.

Application 02-02-001
(Filed February 4, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
FINDING APPLICATION DEFICIENT**

Del Oro Water Co., Inc. seeks a certificate of public convenience and necessity authorizing it to construct a transmission main and associated facilities to pump, treat and transport water from Lake Oroville to three of its water systems in Butte County. The application also asks for authority to incur indebtedness with which to finance the project , and to recover all associated costs in future rates.

After review, it has been determined that the Application is deficient. Del Oro must either amend the Application or withdraw it and resubmit it when it has been redrafted to comply with the Commission's Rules of Practice and Procedure and this ruling.

Rule 18, Applications for CPCNs

The Application states that it seeks a certificate of public convenience and necessity pursuant to Public Utilities Code Section 1001.¹ Rule 18 applies to applications under Section 1001 by an existing water utility to begin construction of an extension of such character as to require certification under Section 1001. To the extent this Application seeks such authority, it appears not to comply with numerous parts of Rule 18 including, but not necessarily limited to, Rules 18(a), 18(b), 18(c), 18(d), 18(f), and 18(h).

In addition, there is no support or further reference whatsoever for Applicant's request that the Commission find "[t]hat the subjects to be considered by the Commission in connection with this Application as required by Public Utilities Code Section 1002 have been sufficiently considered by the Commission."²

Rules 17.1 and 17.2, CEQA

The Application seeks a finding "[t]hat the Project referred to in this Application is exempt from the California Environmental Quality Act of

¹ Application at pages 1, 2, 8, and 9.

² Under Section 1002, in granting a certificate under Section 1001, the Commission must consider: (1) community values; (2) recreational and park areas; (3) historical and aesthetic values; and (4) influence on the environment.

1970...”³, citing Rule 17.2, Motion for Determination of Applicability of CEQA. There is no support whatsoever, and only one other reference, in the body of the Application to environmental matters: an isolated citation to Rule 17.1(h)(1)(A)1.1, a section which does not exist.

Without explanation, it is difficult to see how this project is CEQA-exempt. The project entails construction of “...a transmission main, (and associated pumps, valves, tanks, structures, enhanced treatment facilities, and other plant) enabling [Applicant] to pump, treat and transport water from Lake Oroville in Butte County to three of its water systems... in order to provide a regional solution to the existing and long-term needs of customers of said water systems for water.” There is a strong implication that the project will both meet the needs of current customers and allow for future growth in the number of customers.⁴ Nor is the project minor in scale: it anticipates construction of more than eight miles of new pipeline in two phases at a total cost of \$7,455,442.

Further, close inspection of exhibits attached to the Application indicates that Applicant’s consulting engineers have anticipated the need for environmental review. In Exhibit B, the preliminary cost estimates for phases 1 and 2, they have included in the project cost two line items totaling \$250,000 for “CEQA.” The phase 1 timeline, Exhibit C to the Application, includes on the critical path approximately 2 months for “Environmental Documents” followed by 4½ months for “Review of Environmental Documents Plans and Specs,” both during the “Design – Plans and Specs (Pipeline)” phase. The timeline further

³ Application at page 9.

⁴ This is further supported by the Commission’s recent D.02-01-014, which also dealt with matters relating to this project.

shows these activities to commence immediately *following* Commission review and approval. Bidding and construction are shown to begin only after the environmental activities are complete.

Given these clear indications to the contrary, Applicant's representation to the Commission without elaboration that the project should be found CEQA-exempt is, at the least, troubling.

Applicant bears the burden of supporting its claim that the project is either CEQA-compliant or CEQA-exempt, as appropriate. That has not been done here. Moreover, based on information in the Application, there is ample reason to believe Applicant should submit the Proponent's Environmental Assessment required by Rule 17.1. Applicant and its consultants should also note that CEQA compliance must be addressed *before* the Commission considers granting its approval, not after.

Applicant should keep in mind that if CEQA review is required for a project prior to a Commission decision, preparation and completion of an environmental impact report generally takes approximately one year from the date an application is deemed complete, consistent with the Permit Streamlining Act. Applicant should consult as soon as possible with the Commission's CEQA Team staff in the Energy Division to discuss the procedures, project scope and timelines for CEQA implementation. To the extent that the amended or withdrawn and resubmitted Application is not fully CEQA-compliant, or in the alternative does not provide a complete, well-supported and convincing justification for CEQA exemption, the proceeding may be further delayed or the Application rejected.

Where approvals are required from more than one entity, a determination must be made which is to be the lead agency for CEQA purposes and which will be responsible agencies. To assist the Commission in this regard, Applicant must

include in the amended Application a complete list of the permits and authorizations the project will require and from what agencies; whether those permits are ministerial or discretionary in nature; when those permits would be issued; and whether Applicant has engaged the agencies in pre-consultation pursuant to the CEQA guidelines.

Rules 33 and 34, Applications to Issue Evidence of Indebtedness

The Application states that it seeks “authority to incur indebtedness with which to finance such project...”, and cites Sections 816 through 819 inclusive.⁵ The Application is clear that the preferred long-term funding source is to be the state’s Safe Drinking Water State Revolving Fund, in the form of a planning loan to be followed by a construction loan. If necessary, Applicant will use internal funds and short-term debt to proceed, in which case the short-term debt would eventually be replaced (“take-out financing”) by the SRF long-term funding, if available, or from banks and/or other conventional lending sources if not. The Application’s wording is unclear but seems to say that it seeks approval at this time only for SRF long-term funding, and then only if it is available without need for interim short-term funding; and otherwise, Applicant will return at a later date for Commission approval of either SRF or conventional long-term borrowing if that borrowing is to be used to take out interim, short-term funding.

Rules 33 and 34 apply to applications under Sections 816-830 and require more information, and much more specific information, about the borrowing proposed. To the extent that specific information about the proposed borrowing and the obligations it will impose on Del Oro and its ratepayers is not yet available, this part of the Application may be premature and Applicant may

⁵ Application pages 1 and 2.

need to clarify that it is seeking only the Commission's general endorsement of its funding method, with specific approval to be sought in a subsequent application when more is known. Otherwise, the Application must address the requirements of Rules 33 and 34.

Rules 23 and 24, Applications for Authority to Increase Rates

Applicant proposes to repay whatever project funds are borrowed through monthly Regional Water Supply Charges, and new connection charges, to its customers in the affected districts. Exhibits D, E and F to the Application set forth rate surcharge schedules for three hypothetical borrowing scenarios. The proposed connection charges are set forth in the body of the Application.

These charges constitute rate increases. Applications proposing increased rates must meet the requirements of Rules 23 and 24. Applicant has met some of those requirements (e.g., the Application contains a balance sheet and income statement complying with Rule 23(a)), but not others.

There is no indication that the Applicant has met, or intends to meet, any of the notice requirements of Rule 24. In addition to meeting the Rule 24 requirements, Applicant should provide in advance for the ALJ's review and approval draft copies of the published public notice and the customer bill insert notice required in the second and third paragraphs of that Rule.⁶

Other

The Application indicates that time is of the essence in obtaining Commission approval for this project. As well, the legislature has expressed its desire that the Commission process ratesetting proceedings within 18 months of

⁶ To facilitate review, Applicant is to provide copies by e-mail attachment to the ALJ at jcm@cpuc.ca.gov.

filing. Thus, it is important to know how Applicant intends to proceed. If the Application has not been either amended or withdrawn within 30 days from the date of this ruling, Applicant is to file and serve on the ALJ and those on the then-current service list a statement indicating how it intends to proceed and when.

Under Rule 44.1, protests and responses to applications must be filed within 30 days of the date the notice of the application's filing first appears in the Commission's Daily Calendar. This ruling extends that deadline for filing protests and responses to 30 days after notice of the amended application's filing first appears on the Daily Calendar. Potential parties should be aware, however, that at the ALJ's or assigned Commissioner's discretion a prehearing conference may be set before that time, in which case the then-current service list would be used to serve notice. Names may be added to the service list at any time before the prehearing conference by contacting the Commission's Process Office.

IT IS RULED that:

1. Application 02-02-001 is deficient for the reasons outlined in the body of this ruling.
2. Within 30 days from the date of this ruling, Del Oro Water Company, Inc., shall either withdraw the Application, amend it to correct the deficiencies noted in the body of this ruling, or file and serve on the ALJ and those on the then-current service list a statement indicating how it intends to proceed and when.
3. The deadline for filing protests and responses to the Application is extended to 30 days after notice of an amended application's filing first appears on the Daily Calendar.

Dated March 4, 2002, at San Francisco, California.

/s/ JAMES C. MCVICAR

James C. McVicar
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Finding Application Deficient on all parties of record in this proceeding or their attorneys of record

Dated March 4, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.